master and mariners, applied only to negligence during the voyage and not to negligence while the duties of common carrier still subsisted, but after the ship had been brought to her dock. *Gleadell* v. *Thomson* (1874) 56 N. Y. 194. The present case, though not governed by that one, is in line with it, as well as with the many decisions which hold that a general clause of exemption will not be construed to cover liability for negligence unless a contrary intention is plainly expressed. All these results rest at bottom on the principle that the exempting clauses, being for the benefit of the carrier and inserted in contracts drawn up by the carrier, must be construed strictly.

A different line of reasoning, it is thought, would have led to the same conclusion. A carrier who delivers goods, whether negligently or otherwise, which have been stopped *in transitu*, is guilty of conversion. *Pontifex* v. *Midland Ry. Co., supra*; *Bloomingdale* v. *Memphis etc. R. Co.* (Tenn. 1881) 6 Lea, 616. And a carrier loses the benefit of an exception in a bill of lading if he is guilty of a misfeasance; as where he departs from the course agreed upon, *Maghee* v. *Camden & Amboy R. Co.* (1871) 45 N. Y. 514; or from the method of carriage agreed upon, *Pavitt* v. *Lehigh Valley R. Co.* (1893) 153 Pa. St. 302; or where he is guilty of conversion in delivering to the wrong person, *Erie Dispatch* v. *Johnson* (1889) 87 Tenn. 490; or even where he merely fails without excuse to deliver to a connecting carrier, *Rawson* v. *Holland* (1875) 59 N. Y. 611.

A second, though minor point in the case is worthy of notice. The judges who dissent from the reasoning of the majority concur in the judgment in favor of the plaintiffs on the ground that the trial court might have found that the plaintiffs were not notified at the time of shipment of the limitations in the receipt. This position is not referred to in the prevailing opinion. Had it been adopted by the whole court the holding would have confused a distinction which has been taken between two lines of New York cases. Under the decisions in that State, the consent of shippers is conclusively presumed to conditions and limitations in bills of lading and shippers' express-receipts, *Belger* v. *Dinsmore* (1872) 51 N. Y. 166; *Zimmer* v. *R. Co.* (1893) 137 N. Y. 460; while conditions in the baggage receipts of local transfer companies are not binding unless the taker knows at least, that the paper is a contract. *Grossman* v. *Dodd* (1892) 63 Hun 324; *Springer* v. *Westcott* (1901) 166 N. Y. 117. Whether or not the distinction is sound, it has seemed hitherto well established. See 1 COLUMBIA LAW REVIEW, 265. The view taken by CULLEN, J., and PARKER, C. J., however, requires actual assent to the terms of a receipt given to one shipping to a distance by express. *Springer* v. *Westcott, supra*, cited by CULLEN, J., does not warrant this position.

LIMITATIONS WITHIN WHICH A MORTGAGEE MAY STIPULATE FOR COLLATERAL ADVANTAGES. In the case of *Noakes and Company, Limited*, v. *Rice* [1902] A. C. 24, the House of Lords has rendered a decision that is of much importance. It determines with greater

precision than before the mutual rights of mortgagor and mortgagee with respect to the latter's equity of redemption. The facts of the case were these: The plaintiff was a licensed victualler who in 1897 bought a public-house held under a lease expiring in 1923. To obtain the money for his purchase he borrowed a certain sum from the defendants, who were brewers, and gave them a mortgage of the premises, to secure the loan. In this mortgage, to the intent that the obligation should run with the land, he covenanted that, whether any principle or interest should or should not be owing on the security, he would neither use nor sell upon the premises, during the continuance of his term, any malt liquors except such as should be *bona fide* purchased by him of the mortgagee. The court *held* that the plaintiff was entitled, upon paying all that was due upon the security, to have a reconveyance of the property, or, at his option, a transfer of the security, free in either case from the covenant set forth above.

Since one of the essential characteristics of a mortgage is the mortgagor's right to redeem the property given as a security for his debt or engagement by paying the debt or performing the engagement, any attempt to clog, fetter, or destroy this right is void. *Marquis of Northampton* v. *Salt* [1892] A. C. 1. As to the soundness of this rule there is no conflict and the principal case would seem clearly to fall within it. Differences of fact, however have led to varying conclusions, so as to give color to the argument of the defendants in this case, that "great differences of judicial opinion are apparent upon many of the decisions which are germane to the present appeal." In support of the contention that the covenant in question did not fall within the rule, the defendants relied upon *Santley* v. *Wilde* [1899] 2 Ch. 474. There A. owned the lease of a theater for ten unexpired years. To secure a loan from B. she gave B. a mortgage of the premises and covenanted to pay B. one third of the profit-rental of the theater for the residue of her term; and the court held that A. could not redeem so as to get rid of the liability to pay the share of profits for which she covenanted. The court seems to have gone on the false assumption that the equity of redemption did not arise until A. had not only paid principal, interest, and costs, but had also performed her collateral agreement. But the Earl of HALSBURY, L. C., Lord MACNAGHTEN, and Lord DAVEY, all declared in the principal case that the court in *Santley* v. *Wilde* took an erroneous position in refusing to apply the rule to to the facts before it. *Santley* v. *Wilde*, then, may be regarded as wrongly decided; although the propositions of law announced in it are sound.

Had the mortgagor in the principal case covenanted to purchase from the mortgagee, during the continuance of the security, all the malt liquors used or sold upon his premises, the covenant would have been valid, provided the collateral advantage thereby obtained by the mortgagee did not make his total remuneration for the loan exceed the legal interest. *Biggs* v. *Hoddinott* [1898] 2 Ch. 307. For, such a covenant, unlike that sought to be upheld in

Noakes v. *Rice*, would not prevent the mortgagor from being equally able to redeem at any time, nor compel him upon payment of principal, interest and costs to take back the property mortgaged in a different condition from that in which he parted with it—subject to a "tie."

EMINENT DOMAIN—RIGHTS UNDER RESTRICTIONS IN DEEDS.—The rights of the Federal government under its powers of eminent domain have received further definition in the case of *The United States* v. *Certain Lands in Town of Jamestown* (R. I. 1902) 112 Fed. 622. Lots of land were conveyed by deeds containing restrictions as to their use. The government condemned some of these lots for the purpose of fortification. An adjoining owner who was thus deprived of his rights under the restrictions in the deeds of the land condemned by the government claimed compensation on the ground that his property had been taken. The court denied his claim and based its opinion on the theory that the deeds in question contemplated only such offensive businesses as were carried on by individuals. Assuming that the restrictions were meant to include governmental uses, however, the court declared them contrary to public policy and asserted that there can be no "property right whatever, springing from private grant, that the lands of another shall not be used for necessary governmental purposes." The influence of public policy in determining the rights of the government as against individuals is materially increased by this decision.

The particular aspect of the doctrine presented by the principal case is unusual. Somewhat analogous cases may be found in the right of the government to erect dams in order to improve navigation, without making compensation to damaged fishery interests. *Shrunk* v. *Schuylkill Navigation Co.* (1826) 14 S. and R. 71. The same rule governs the improvement of navigation by bulkheads, *Slingerland* v. *International Contracting Co.* (N. Y. 1901) 61 N. E. 905; 2 COLUMBIA LAW REVIEW, 266; the deepening of a river channel, although causing the destruction of a spring, *Commonwealth* v. *Richter* (1845) 1 Pa. St. 467; the straightening of a river, *Green* v. *State* (1887) 73 Cal. 29. But see *Pumpelly* v. *Green Bay, &c., Co.*, (1871) 13 Wall. 166. The construction of a bridge across a navigable stream, while injuriously affecting private interests, may also be *damnum absque injuria*, *Davidson* v. *Boston and Me. R. R. Co.* (1849) 3 Cush. 91. So also a tunnel under the Chicago River, *Transportation Co.* v. *Chicago* (1878) 99 U. S. 635. The grade of city streets may sometimes be changed with consequential damage to value of adjacent lots and no rights result against the city. Where compensation is given, it is generally purely statutory. The Ohio doctrine is exceptional. *Crawford* v. *Delaware* (1857) 7 Ohio St. 459. 1 Lewis, Eminent Domain, 199, 201, 202, 205, and cases there cited.

Fortified as the doctrine is by these authorities, it is not unquestioned. An excellent discussion may be found in *Eaton* v. *Boston, C. and M. R. R. Co.* (1872) 51 N. H. 504. That property